

ORIGINAL

BEFORE THE CONTRACTORS BOARD

RECEIVED

STATE OF IDAHO

JUL 22 2009

OCCUPATIONAL LICENSES

In the Matter of the Registration of:)
TK ENTERPRIZE,) Case No. CON-2008-149
Registration No. RCE-17958)
Respondent.) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW AND**
) **RECOMMENDED ORDER**
)

Having reviewed the Complaint and other documents in this matter, the Hearing Officer hereby enters the following Findings of Fact, Conclusions of Law, and Recommended Order:

FINDINGS OF FACT

1. TK Enterprize (hereinafter "Respondent") is registered by the Idaho State Contractors Board (hereinafter "Board") under Registration No. RCE-17958 to engage in the practice of contracting.

2. On May 29, 2009, a formal administrative Complaint was filed in this matter with the Board. Said Complaint is expressly incorporated herein and made a part hereof.

3. Copies of the Complaint, along with the Notification of Procedural Rights, were sent to Respondent on May 29, 2009 by means of the United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail. The mailings were addressed to Respondent at its most recent home address on file with the Board, as follows:

P.O. Box 18181
Spokane, WA 99228

4. The certified mail has not been returned to the sending office. However, the tracking information revealed that as of June 20, 2009, the certified mail envelope was "unclaimed" and being returned to the sender. The envelope containing a copy of the

Complaint which was sent to Respondent by regular mail was not returned to the sending office.

5. The Notification of Procedural Rights informed Respondent that, under statutes and rules applicable to such proceedings before the Board, Respondent needed to file a formal Answer to the Complaint within twenty-one (21) days of service of the Complaint and that failure to timely file an Answer to the Complaint or otherwise defend against the action would constitute a default and would be sufficient grounds for proceeding administratively against Respondent's registration without the necessity of conducting a hearing.

6. On 6/30/09 a Notice of Proposed Default Order and Default Order, along with another copy of the Complaint and Notification of Procedural Rights, were sent to Respondent by means of the United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail, at the following address:

TK Enterprize
P.O. Box 18181
Spokane, WA 99228

7. Respondent failed to contest entry of the proposed Default Order within seven (7) days of service of the Notice of Proposed Default Order.

8. Concurrent herewith, a Default Order was entered against Respondent. Therefore, the allegations contained in the Complaint on file in this matter are admitted as true without the necessity of conducting a hearing.

9. As detailed in the incorporated Complaint, Respondent, while a registered contractor, did do the following:

a. On April 27, 2007, Respondent entered into a Contract and Sales Agreement with D.N. to build a shop for \$16,300. Respondent and D.N. entered into another Contract and Sales Agreement on June 5, 2007, to build a garage for \$19,801.80.

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b. The Contract and Sales Agreements provided when D.N. was to make payments to Respondent. D.N. made the payments as required under the Contract and Sales Agreements.

c. Respondent's agreements did not provide the consumer disclosures as required by Idaho Code § 45-525.

d. On September 12, 2007, the Kootenai County Building & Planning Department inspected the garage framing, and it failed the inspection.

e. On September 21, 2007, the Kootenai County Building & Planning Department inspected the shop framing, and it failed the inspection.

f. Respondent refused to return to the building site and correct the problems identified by the Kootenai County Building & Planning Department unless D.N. made another payment.

CONCLUSIONS OF LAW

1. As a registered contractor in the State of Idaho, Respondent is subject to the jurisdiction of the Board and to the provisions of title 54, chapter 52, Idaho Code.

2. The Complaint was sent to Respondent at the address on file with the Board. Respondent was duly and lawfully given notice of proceedings against its registration pursuant to the provisions of IDAPA 04.11.01.055.

3. Respondent's failure to plead or otherwise defend in this action authorizes the Board, pursuant to Idaho Code § 67-5242(4) and IDAPA 04.11.01.700, to enter an Order of Default which is as lawful as if all the allegations in the Complaint were proved or admitted at a hearing.

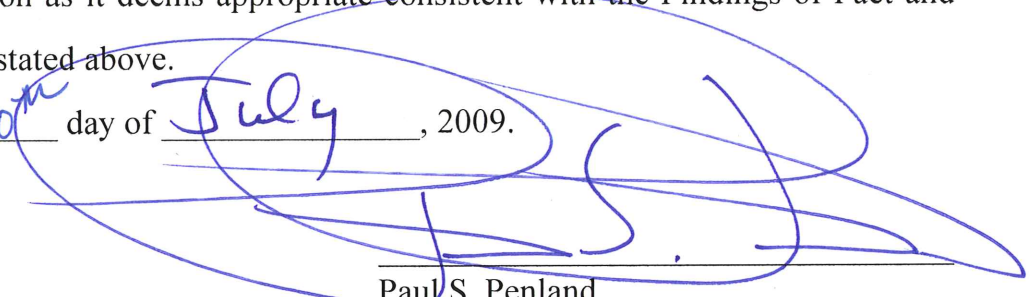
4. Respondent's acts as described in the Complaint constitute grounds for discipline against Respondent's registration to practice contracting under the laws governing the practice of contracting in the State of Idaho, specifically Idaho Code §§ 54-5215(2)(b) (failure to provide disclosures is a violation of the Idaho Consumer Protection Act and grounds for discipline against a contractor) and 54-5215(2)(h) (conduct which

substantially fails to meet the generally accepted standard of care in the practice of construction in Idaho).

ORDER

Based upon the foregoing, it is the recommendation of the Hearing Officer that the Board take such action as it deems appropriate consistent with the Findings of Fact and Conclusions of Law stated above.

DATED this 20th day of July, 2009.



Paul S. Penland
Hearing Officer

NOTICE OF DUE PROCESS RIGHTS

This is a recommended order of the Hearing Officer. It will not become final without action of the Board. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer issuing the order within fourteen (14) days of the service date of this order. The Hearing Officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Idaho Code § 67-5243(3).

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding.

Written briefs in support of or taking exceptions to the recommended order shall be filed with the Board. Opposing parties shall have twenty-one (21) days to respond. The Board may schedule oral argument in the matter before issuing a final order. The Board will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties and for good cause shown. The Board may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

CERTIFICATE OF SERVICE

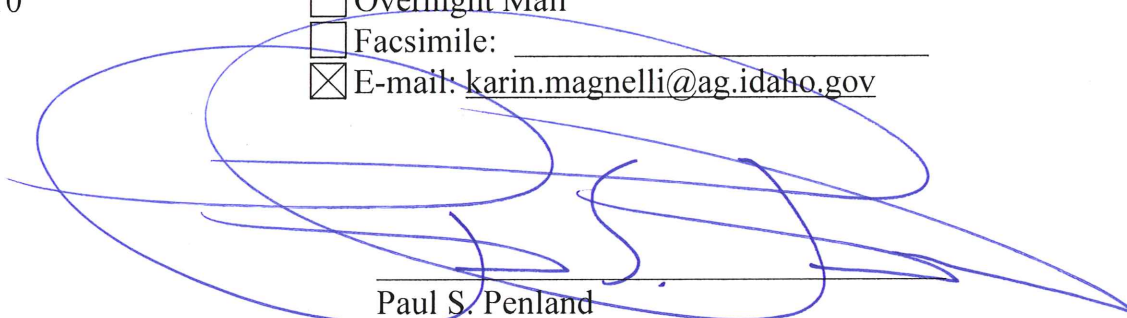
I HEREBY CERTIFY that on this 20th day of July, 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

TK Enterprize
P.O. Box 18181
Spokane, WA 99228

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____

Karin Magnelli
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ E-mail: karin.magnelli@ag.idaho.gov



Paul S. Penland
Hearing Officer